

## Foreign Agricultural Service, USDA

## § 1560.2

response, the Director, CRS, determines that FAS may be entitled to recover funds from the Cooperator, the Director, CRS, will refer the compliance report to the Deputy Administrator.

(b) If, after review of the compliance report and response, the Deputy Administrator determines that the Cooperator owes money to FAS, the Deputy Administrator will so inform the Cooperator. The Deputy Administrator may initiate action to collect such amount pursuant to 7 CFR Part 1403, Debt Settlement Policies and Procedures. Determinations of the Deputy Administrator will be in writing and in sufficient detail to inform the Cooperator of the basis for the determination. The Cooperator has 30 days from the date of the Deputy Administrator's initial determination to submit any money owed to FAS or to request reconsideration.

### **§ 1550.76 Can a Cooperator appeal the determinations of the Deputy Administrator?**

(a) The Cooperator may appeal the determinations of the Deputy Administrator to the Administrator. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days following the date of the initial determination by the Deputy Administrator or the determination on reconsideration. The Cooperator may request a hearing.

(b) If the Cooperator submits its appeal and requests a hearing, the Administrator, or the Administrator's designee, will set a date and time, generally within 60 days. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Cooperator bears the cost of a transcript; however, the Administrator may have a transcript prepared at FAS's expense.

(c) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after submission of the appeal, hearing, or receipt of any transcript, whichever is later. The determination of the Administrator will be the final determination of FAS. The Cooperator must exhaust all administrative remedies contained

in this section before pursuing judicial review of a determination by the Administrator.

## **PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS**

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**AUTHORITY:** Secs. 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (102 Stat. 1855 and 1865-67).

**SOURCE:** 54 FR 1327, Jan. 13, 1989, unless otherwise noted.

### **§ 1560.1 Scope.**

This part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

### **§ 1560.2 Definitions.**

The following definitions shall be applicable to this part:

(a) *Administrator* means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) *Average Monthly Import Price* means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) *Average Planted Acreage* means the average of the annual planted acreage in the U.S. for a particular fresh fruit or vegetable for the preceding five years excluding the years with the highest and lowest acreages based on

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available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) *Canadian fresh fruit or vegetable* means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) *Corresponding Five-Year Average Monthly Import Price* for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) *F.O.B. Point of Shipment Price in Canada* means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) *Fresh Fruit or Vegetable* means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) *HS heading* means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01 .....	Potatoes, fresh or chilled.
07.02 .....	Tomatoes, fresh or chilled.
07.03 .....	Onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled.
07.04 .....	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05 .....	Lettuce ( <i>lactuca sativa</i> ) and chicory ( <i>cichorium</i> spp.), fresh or chilled.
07.06 .....	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07 .....	Cucumbers and gherkins, fresh or chilled.
07.08 .....	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09 .....	Other vegetables (excluding truffles), fresh or chilled.
08.06.10 .....	Grapes, fresh.
08.08.20 .....	Pears and quinces, fresh.
08.09 .....	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
08.10 .....	Other fruit (excluding cranberries and blueberries), fresh.

(i) *Import Price* means the unit value based on data available from the U.S. Customs Service of a particular Canadian fresh fruit or vegetable imported into the U.S. from Canada taking into account any other relevant data, as necessary.

(j) *Secretary* means the Secretary of Agriculture.

(k) *United States* means the United States Customs Territory which includes the fifty states, the District of Columbia and Puerto Rico.

(l) *Wine Grape* means grapes of *labrusca*, *vinifera* or hybrid *vinifera* varieties used for making wine.

(m) *Working Day* means a day which falls on a Monday through Friday, excluding holidays observed by the United States Government and days in which the U.S. Customs Service is not operating.

### § 1560.3 Determination of fresh fruit or vegetable.

The specific group of articles that will be monitored as a particular fresh fruit or vegetable will be determined based on the practicability of monitoring at the eight digit subheading level of the Harmonized Tariff Schedule of the United States. The determination of practicability will be made by the Administrator taking into account: (a) The availability of reliable volume and price data on imports from Canada and data on U.S. planted acreage, (b) market differentiation for the group of articles, and (c) such other factors as the Administrator determines to be appropriate.

### § 1560.4 Calculation of data to support imposition of temporary duty.

The Administrator will inform the Secretary when the following conditions are met with respect to a particular fresh fruit or vegetable imported into the United States from Canada:

(a) If for each of five consecutive working days the import price of the fresh fruit or vegetable is below ninety percent of the corresponding five-year average monthly import price for such fresh fruit or vegetable excluding the years with the highest and lowest corresponding monthly import price; and